

REMARKS

Reconsideration of the first Office action issued in connection with the above-identified patent application is requested in view of the foregoing amendments and the following remarks. Prior to entry of the above amendments, claims 1-19 were pending. In the Office action, the Examiner rejected claims 1-19 under 35 U.S.C. § 103(a) as being obvious, and additionally rejected claims 10 and 12 as being indefinite. By the above amendments, claim 10 is cancelled without prejudice, claims 1, 12-13, and 15-17 are amended, and new claims 20-28 are added. Applicants have studied the cited references and the reasons for rejecting the claims, and Applicants respectively traverse the same. However, Applicants submit that the above claim amendments render the rejections moot, as the remaining claims have been amended to more particularly point out and distinctly claim the subject matter for which protection is sought in the current application.

In the Office action, independent claim 1 and dependant claims 2, 5-6, and 8-19 were rejected as being obvious over Anton (U.S. Patent No. 4,837,077), in view of Cottrell (U.S. Patent No. 5,532,350) and Brander (U.S. Patent No. 6,376,034). The Examiner correctly recognizes that Anton fails to disclose or suggest the composition recited in original (and amended) claim 1. Specifically, the Examiner notes that Anton discloses a composition that includes a superabsorbent polymer and a binder, but that Anton fails to disclose or suggest the inclusion of a gum or a binder in the composition. However, the Examiner says that Cottrell and Brander respectively disclose the use of gum and gelatin in absorbent compositions and that it would have been obvious to modify the composition of Anton to further include both a gum and a binder. Applicants

respectfully traverse and request reconsideration of this rejection in view of the following remarks and the amendments to claim 1.

Amended claim 1 is presented below, with the claim amendments made herein shown for the Examiner's convenience:

1. (currently amended) An absorbent composition[,] **for use in a children's amusement device, the composition consisting essentially of a granular mixture** comprising a superabsorbent polymer, a gum, gelatin and a binder.

As indicated above, amended claim 1 recites, in part, an absorbent composition for use in a children's amusement device, with the composition consisting essentially of a granular mixture that comprises a superabsorbent polymer, a gum, a gelatin and a binder. As discussed in more detail in the specification at page 7, lines 19-20, the composition is formed by the mixing together of granular components that include a polymer, a gum, a gelatin and a binder. During use, the essentially granular composition is deposited, or spread, onto the base of a play structure. With the addition of a fluid, the composition grows and expands upwardly to fill the shape of the play structure. For example, see page 16, lines 15-18, of Applicants' specification.

Applicants agree with the Examiner that Anton discloses an absorptive composite material, albeit a fixed, expandable material for use in the cable industry instead of a granular powder for use in a children's amusement device. However, the composite material disclosed in Anton is simply a hydroexpandable polymer powder fixed onto a flat support by means of a hydrosoluble binder. This binder is not granular and is not mixed with the polymer. As clearly stated in Anton at column 2, lines 57-60, the "binder is chosen from the hydrosoluble agents capable of fixing the chosen polymer

powder on the chosen support.” As such, the binder only serves to bind the polymer to the operable surface. While this composite material includes a polymer, a binder and a surfactant, these three elements are not mixed together, and only the polymer is a granular powder. Additionally, the composite absorbent material of Anton is fixed onto a solid support surface, to which the binder binds the polymer powder.

Applicants further agree that Cottrell discloses an absorbent material that includes a gum, and that Brander discloses an absorbent composition that includes a gelatin. The absorbent materials of Cottrell and Brander are disclosed as being for use in diapers, sanitary napkins and similar articles. Significantly, none of the cited references teach or suggest an absorbent composition.

In applying 35 U.S.C. § 103, the prior art references must suggest the desirability, and thus, the obviousness of making the combination. In other words, there must be some teaching or suggestion to combine the cited references. Such a requirement serves to prevent against the benefit of impermissible hindsight vision afforded by the disclosure. See In re Paulsen, 30 F.3d 1475, 1482 (Fed. Cir. 1994) and Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 (Fed. Cir. 1986). The Federal Circuit further clarified this teaching requirement of obviousness in McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 60 USPQ2d 1001 (Fed. Cir. 2001) in stating that:

We have noted elsewhere, as a ‘useful general rule,’ that references that teach away cannot serve to create a prima facie case of obviousness. If references taken in combination would produce a ‘seemingly inoperative device,’ we have held that such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness.

Id. at 1354 (citations omitted). Thus, it is impermissible to consider an inoperable combination of references as rendering a claim obvious under 35 U.S.C. § 103.

In applying these legal standards, Applicants respectfully traverse and request reconsideration of the Section 103 rejection of claim 1. None of the references discussed above, nor the collective disclosures of all of the references, provide the required teaching or motivation to produce the combination proposed in amended claim 1. Ignoring the fact that these references do not suggest the specific combination of claim 1, Anton, Cottrell and Brander all fail to even suggest such a fluid-swellable material including a polymer, a gum, gelatin, and a binder mixed in a composition that is essentially granular. None of these three cited references suggest that such a combination would be desirable to achieve the absorptive composition for use in a children's amusement device of amended claim 1.

Perhaps most importantly, Anton specifically teaches away from such a granular composition. The (essentially) granular mixture of amended claim 1 would be inoperable as directed to use in the cable industry. Anton discloses a polymer powder that is fixed onto a solid surface by a non-granular binder. As described in Anton, the composition, including the polymer, binder and film, is fixedly positioned within a cable to expand upon contact with liquid, and thus to seal off the cable from any further liquid contact. See Anton at column 2, lines 1-9. Any combination of Anton with Cottrell or Brander to create an essentially granular composition of claim 1 would be incapable of being fixedly positioned. Thus, the combination would be incapable of being positioned to form the sealant of Anton.

Furthermore, Anton very specifically teaches away from the inclusion of components that are not directly used to absorb water or secure the absorbent polymer to a substrate. Neither gum nor gelatin are directly required to absorb water or secure the polymer to a substrate. Instead, they add to the “play value” of the composition by giving the composition a life-like appearance when a child adds water to the composition. This gel-like appearance and play value is out of place in shielding for electrical cables, with Anton specifically teaching away from the inclusion of such additives. For at least the above reasons, Applicants request the reconsideration and withdrawal of the rejections based on Anton in combination with Cottrell and Brander.

Although seemingly moot in view of the above discussion, Applicants also submit that the granular composition of amended claim 1 would also be inoperable in the diapers or sanitary napkins of Cottrell and Brander. As these absorptive garments are subject to a user’s movements, the absorptive material contained within these articles is fixed in a desired position. If a granular absorptive composition, such as is recited in claim 1, were used in such garments, the granules would freely shift and would thus be inoperable in providing the desired positional absorption. For at least the above reasons, Applicants submit that amended claim 1 patentably distinguishes Anton in view of Cottrell and Brander and should be allowed.

Applicants further submit that the rejection of the pending claims over Anton in view of Cottrell and Brander should be withdrawn because these cited references are non-analogous art to the present application. For these references to be analogous prior art they must either be from the same field of endeavor as Applicants’ invention or reasonably pertinent to the particular problem to be solved. See, e.g., Wang

Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993), (memory for industrial computers not analogous art to memory for personal computers). As discussed briefly above, neither of these conditions are met. Anton is directed to sealing ribbons in cables, germination activators, or surgical sponges, and Cottrell and Brander are directed to diapers, sanitary napkins, and food containers. The present application is directed to children's toys. A person of reasonable skill in the art of creating children's toys would not be reasonably expected to combine a reference from the cable industry with references directed at diapers or sanitary napkins.

Similarly, all other references cited in the Office action are non-analogous art to the toy-related amended claim 1. Dependant claims 4 and 5 (which Applicants believe the Examiner has inadvertently identified as 3 and 4 in the Office action) were further rejected as being obvious over Anton in view of Tucker (U.S. Patent No. 5,647,300) or Chmielewski (U.S. Patent No. 6,545,195), and dependent claim 7 was further rejected as being obvious over Anton in view of Goss (U.S. Patent No. 4,622,920). Tucker and Goss are both directed to cat litter, and Chmielewski is directed to incontinent garments and sanitary napkins. As the present disclosure is directed to children's toys, these references are non-analogous art. Thus, for at least this additional reason, these rejections should be withdrawn.

Finally, even if the proposed modification is made, the absorbent composition recited in amended claim 1 is neither disclosed nor suggested. As discussed, the cited references do not disclose or suggest an absorbent composition (for children's toys or other articles) that consists essentially of a granular mixture of a superabsorbent polymer, gum, gelatin, and a binder.

Claims 2-9, 11-19, and new claims 20-25 depend from amended claim 1 and therefore should be allowed when amended claim 1 is allowed. For the purpose of brevity, Applicants have not discussed every additional reason why each of these dependent claims patentably distinguishes the cited references. However, Applicants want to further discuss a few of these dependent claims.

Dependant claim 5 was rejected as being obvious over Anton in view of Cottrell and Brander, and further in view of Tucker or Chmielewski. Original claims 5 and 6, and new claim 23 are presented below for the Examiner's convenience:

5. (original) The composition of claim 1, wherein the composition further includes a plurality of reflective particles.

6. (original) The composition of claim 5, wherein the reflective particles include glitter.

23. (new) The composition of claim 1, wherein the composition further includes a colorant and a plurality of reflective particles.

Applicants agree that both Tucker and Chmielewski disclose absorbent composites that include colorants. Tucker, at column 12, lines 21- 29 lists twelve potential additives, including a colorant, and Chmielewski, at column 7, lines 1-6, lists eight possible additives, including a colorant. However, neither Tucker nor Chmielewski suggest any reason to add reflective particles, much less glitter, to the composition. Moreover, Applicants suggest that the primary reference, Anton, teaches away from this modification because glitter and similar particulate would be undesirable and presumably problematic in shieldings for electrical cables. It is also important to

note that in column 1, lines 40-49, Anton specifically teaches away from the inclusion of components that do not directly affect the absorbency of the composition. For at least this additional reason, Applicants submit that claims 5 and 6 patentably distinguish Anton in view of Tucker or Chmielewski and should be allowed. New claim 23 should also be allowable because it also recites the inclusion of reflective particles in the composition.

Claims 10 and 12 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite due to the use of the word "substantially." Claim 10 has been cancelled without prejudice. Claims 12 and 13, which also originally recited the word "substantially," have been amended. As amended, claims 12 and 13 do not contain the word "substantially" and these dependent claims should be allowed when amended claim 1 is allowed.

New claim 25 depends from amended claim 1 and further recites that the composition is reusable and is adapted to absorb a further volume of water-based fluid after an initial volume of water-based fluid has evaporated. None of the cited references disclose or suggest a reusable absorbent composition, much less the (essentially) granular composition recited in amended claim 1. Furthermore, the secondary references are specifically directed at single use, disposable articles and therefore clearly teach away from the subject matter of new claim 25. For at least these reasons, new claim 25 is believed to be allowable.

New independent claim 26 is directed to a kit that includes a plurality of absorptive compositions. For the Examiner's convenience, claim 26 is presented below:

26. (new) A kit including a plurality of absorptive compositions for use in a children's amusement device, each composition consisting essentially of a granular mixture comprising a superabsorbent polymer, a gum, gelatin, a binder, and a colorant that has a color, and further wherein the colorant of each composition has a different color.

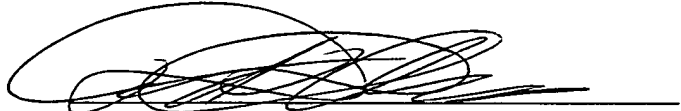
As indicated, claim 26 recites, in part, a kit that includes a plurality of absorptive compositions for use in a children's amusement device. Each granular composition includes a superabsorbent polymer, a gum, gelatin, a binder, and a colorant. The compositions differ from one another in that each composition includes a colorant that has a different, unique color. As discussed above with respect to amended claim 1 and dependent claims 4 and 5, none of the cited references, either alone or in combination, teach or suggest granular absorbent compositions including a colorant for use in toys. Accordingly, it follows that none of these cited reference discloses or suggests a kit including a plurality of such absorptive compositions each of which includes a different color of colorant, much less essentially granular compositions that include a superabsorbent polymer, gum, gelatin and a binder. Accordingly, new claim 26 is believed to patentably distinguish the references of record. New claims 27 and 28 depend from claim 26, and therefore should be allowed when claim 26 is allowed.

With the entry of the above amendments, and for the reasons stated, Applicants submit that all of the issues raised in the Office action have been addressed. If the Examiner has any questions or if there are any remaining issues, Applicants' undersigned attorney may be reached at the number listed below. Similarly, if the Examiner believes that a telephone interview would be helpful to advance prosecution

of the application, the Examiner is invited to contact Applicants' undersigned attorney at the number listed below.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

A handwritten signature in black ink, appearing to read 'David S. D'Ascenzo', is written over a horizontal line.

David S. D'Ascenzo

Registration No. 39,952

PTO Customer No. 23581

Kolisch Hartwell, P.C.

520 S.W. Yamhill Street, Suite 200

Portland, Oregon 97204

Telephone: (503) 224-6655

Facsimile: (503) 295-6679